IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3470 OF 1991

Shri. Pradeep Vasant Shirgaonkar,
ASged 40 years, Occ., Service,
Residing at Plot No.27, Chaverkar Vasahat,
Radhanagari road,
Kolhapur.

....Petitioner.

Vs.

1. The State of Maharashtra,
   through the Finance Secretary,
   Govt. of Maharashtra,
   Having Office at Mantralaya,
   Bombay 400 032.

2. Dy. Collector,
   Stamp & Valuation, Kolhapur,
   Having Office at Kolhapur.

....Respondents.

Shri. N.V. Bandiwadekar i/by Shri.A.V. Bandiwadekar for the petitioner.

Shri. S.K. Chincholikar, AGP. for the Respondents.

CORAM : R.S. MOHITE,J.
DATED : 05/12/2005.

ORAL JUDGMENT :

1. This petition is filed seeking to quash and set aside a judgment and order passed by the Dy. Collector, Stamp & Valuation, Kolhapur in Case No.Karvir/178/1982 dated 7.3.1991.

2. The brief facts of the case are as under:

a) That, by a registered sale deed dated 16.2.1982, the petitioner purchased a plot of land bearing Plot No.27 from Revision Survey No.1102/1, admeasuring 513.28sq.mtrs., situated within the limits of Kolhapur Municipal Corporation, Kolhapur. The sale deed was inadequately stamped on the date when the sale deed was executed. Section 32(A) Sub section-5 provided that the Collector of the District could sue moto or on receipt of information from any source within six years from the date of registration of the instrument referred to in sub section-1 but excluding an instrument executed before 4.7.1980, call for copy of the instrument from the registering officer and examine it for the purpose of satisfying himself as to the correctness of the market value of the property and if upon such examination he had reason to believe that the market value of such property had not been truly and fully set forth in the instrument, he could proceed to collect the proper duty payable on the instrument.

b) The six years period during which Collector could have initiated action under Section 32A (5) came to an end on 15.2.1988 after the expiry of six years. After the aforesaid period had expired, on 28.4.1989 vide Maharashtra Act No.XVIII of 1989 was published in

the Maharashtra Government Gazette and in Section 32A(5) the words "six-years" were substituted by the word "eight-years".

c) On 15.2.1990 before completion of eight years action under Section 32A (5) was initiated by the Collector by his notice. After considering the reply of the petitioner, the impugned order was passed.

3) The only point which has been urged before me that the petitioner had acquired a vested substantive right after expiry of six years. The Maharashtra Act XVIII of 1989 was subsequently published on 27.4.1989 and the said Act would not have retrospective effect and could not take away a substantive right vested in the petitioner. In support of this contention, the petitioner has relied upon four judgments.

. The first judgment mentioned is in the case of **M/s. Punjab Tin Supply Company Vs. Central Government and ors. reported in A.I.R.1984 S.C. 87, the second being in the case of Sri. Vijayalakshnmi Rice Mills and ors. Vs. State of Andhara Pradesh reported in A.I.R.1976 S.C.1471, the third being in the case of Govinddas and ors. Vs. The Income Tax Officer and another reported in A.I.R.1977 S.C.552 and the fourth**

being judgment of the Division Bench of the Andhara Pradesh High Court in the case of Media Anasuyamma and another Vs. Choppeta Lakshmamma reported in A.I.R.1992 Andhara Pradesh 183.

4. In the first judgment delivered in the case of M/s. Punjab Tin Supply Company Vs. Central Government and ors. (supra), the Apex Court held that all laws which affect substantive rights generally operate prospectively and there is a presumption against their retrospectivity if they affect vested rights and obligations unless the legislative intention is clear and compulsive. Such retrospective effect may be given where there are express words giving retrospective effect or where the language used necessarily implies that such retrospective operation is intended. In the case of Sri.Vijayalakshmi Rice Mills (supra) the Apex Court held that a principle was well settled that statutes should not be construed so as to create new disabilities or obligations or impose new duties in respect of transaction which were complete at the time when the Amendment Act came into force. In the case of Govinddas and ors. Vs. the Income Tax Officer and another (supra), the Apex Court held that unless the terms of a statute expressly so provided or necessarily require, retrospective operation should not be given to

a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. In the case of Media Anasuyamma and another Vs. Choppeta Lakshmamma (supra), the Division Bench of the Andhara Pradesh High Court held that it was well settled that every statute and particularly a statute relating to taxation is not to be treated as retrospective in application unless the Amending Act discloses such an intention either expressly or by necessary implication. Fiscal legislation imposing liability is generally governed by the normal presumption that it is not retrospective.

5. In my view, the submission made by the advocate for the petitioner proceeds on the wrong footing that some substantial right accrues in favour of the petitioner because no procedural action to revalue the property and recover the deficit stamp duty was undertaken by the Collector under Section 32A(5) of the Bombay Stamp Act,1948. Section 32A(5) merely permit the Collector to initiate action within the prescribed time for calculating the true market value for recovering the proper stamp duty after following the procedure under Section 32A(4). The Law is well settled that expiry of such limitation period does not extinguish the original

debt and liability . If action under Section-32A (5) was not taken within time, the Collector could not initiate the procedure for recovery of the stamp duty. By the Amending Act the legislature increased the time period available to the Collector for initiating such procedure. Said amendment by itself did not impose any duty, tax, fee or any other financial obligation upon any person. The amended sub section only empowered the Collector to initiate procedure for determining the true market value within a period of eight years. It is pertinent to note that while bringing in this amendment, the legislature has retained the exclusion of documents executed prior to 4.7.1980 and the said date has not been changed. This indicates a clear intention of the legislature to make Amending Act retrospective by implication. This is permissible even under the judgments which were cited above. In the result, there is no substance in the petition and the same is dismissed. The impugned order stands confirmed.

(R. S. MOHITE, J.)